

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :

-v- :

MEMORANDUM & ORDER

INTERNATIONAL BROTHERHOOD OF :
 TEAMSTERS, CHAUFFEURS, :
 WAREHOUSEMEN AND HELPERS OF :
 AMERICA, AFL-CIO, et al., :
 :
 Defendants. :

88 CIV. 4486 (DNE)

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IN RE: ARNOLD ROSS' :
 APPLICATION FOR A STAY :
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EDELSTEIN, District Judge:

Mr. Arnold Ross seeks a stay of this Court's decision in Application CX of the Independent Administrator. The Independent Administrator found that Mr. Ross, while President of IBT Local Union 97, breached his fiduciary duty by failing to investigate allegations of misconduct on the part of another IBT member, and had improperly caused Local 97 to pay legal fees. For these violations of the IBT Constitution, the Independent Administrator permanently barred Mr. Ross from holding union office. In a July 13, 1993 Opinion & Order, this Court affirmed the decision of the Independent Administrator. See July 13, 1993 Opinion & Order, 1993 U.S. Dist. LEXIS 9481 (S.D.N.Y. 1993).

In this circuit, the question of whether to issue a stay encompasses the following considerations:

(a) Whether the stay applicant has made a strong showing that he or she is likely to succeed on the merits;

(b) Whether the applicant will be irreparably injured absent a stay;

(c) Whether the issuance of a stay will substantially injure other parties interested in the proceedings; and

(d) Where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

Applying these criteria to the instant application, I find that Mr. Ross' application for a stay should be denied. First, Mr. Ross has not made a strong showing that he is likely to succeed on the merits. After conducting a hearing in this matter, and receiving post-hearing submissions, the Independent Administrator rendered a well-reasoned, thorough decision. The Independent Administrator found that Mr. Ross violated the IBT Constitution by failing to investigate allegations of misconduct within the Local and by improperly causing the Local to pay legal fees. The findings of the Independent Administrator "are entitled to great deference." United States v. IBT, 905 F.2d 610, 616 (2d Cir. 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y. 1990). This Court will overturn findings when it determines that they are, on the basis of all the evidence, "arbitrary or capricious." United States v. IBT, 905 F.2d at 622. In its July 13, 1993 Opinion & Order, this Court affirmed the Independent Administrator's decision in all respects and found that Mr. Ross had violated the IBT Constitution in the manner charged. Even though two separate tribunals have reviewed and sustained the merits of the charges filed against him, and despite the deference

accorded decisions of the Independent Administrator, Mr. Ross contends without further justification or support that he is likely to succeed on the merits. Given the holdings of this Court as well as the Independent Administrator, however, Mr. Ross' "categorical deni[al]" of the charges is not a sufficient basis for finding a likelihood of success on the merits.

As to whether Mr. Ross will suffer irreparable injury absent a stay, Mr. Ross claims that irreparable injury will result if he is not permitted to complete contract negotiations with Dover Township on behalf of the membership of Local 97, and if he is not permitted to complete his review of twelve pending grievances "because no one else from Local 97 was involved or is familiar with these parties grievances." Brief in Support of Arnold Ross' Motion for a Limited Stay The [sic] Court's July 13 Order, at 5. In addition, Mr. Ross contends that denial of a stay will prevent him from exercising his right to vote as President, which supposedly constitutes irreparable injury.

As a threshold matter, this Court notes that Mr. Ross' application for a stay is dated August 4, 1993. This Court filed its decision in this matter on July 13, 1993. Accordingly, Mr. Ross waited approximately three weeks before moving for a stay, a delay that is inexplicable given that Mr. Ross' papers in support of a stay rely on conclusory allegations and the barest legal support. Such a delay in applying for relief suggests a lack of irreparable harm. See Majorica, S.A. v. R.H. Macy & Co., Inc., 762 F.2d 7, 8 (2d Cir. 1985) ("Lack of diligence, standing alone, may

. . . preclude the granting of preliminary injunctive relief, because it goes primarily to the issue of irreparable harm.").

Moreover, the irony of Mr. Ross' position is patent. This Court and the Independent Administrator found that Mr. Ross abused his position as President of Local 97, and thus violated his obligations to the rank and file. For this reason, Mr. Ross was found unfit to hold union office. Indeed, by causing the Local to pay his legal fees, Mr. Ross depleted the Local's treasury and thus directly harmed the rank and file who are supposedly in such dire need of his services. By failing to investigate allegations of wrongdoing within the Local, Mr. Ross similarly demonstrated a lack of concern for the welfare of the general membership. Given Mr. Ross' conduct, his claim that the general membership of Local 97 will sustain irreparable harm from his absence is without merit. In addition, although Mr. Ross claims that he is essential to ongoing contract negotiations with Dover Township, and that only he can review pending grievances, he has failed to offer any support for this proposition. Other Local 97 officers will no doubt negotiate with Dover Township on behalf of the membership. Indeed, the Investigations Officer represents that "there are at least three full-time [experienced] Local 97 Officers . . . who can negotiate contracts and resolve grievances." Investigations Officer's Memorandum in Opposition to Ross' Motion for a Stay of the Court's Order on Application CX, at 5. Furthermore, even assuming Mr. Ross' familiarity with pending grievances, the fact that another officer will have to undertake the review process

without accumulated knowledge hardly constitutes irreparable injury. See Stewart v. INS, 762 F.2d 193, 199 (2d Cir. 1985) (quoting Oburn v. Shapp, 521 F.2d 142, 151 (3d Cir. 1975), cert. denied, 430 U.S. 968 (1977)) ("Mere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough" to justify a stay).

The third criteria is whether staying the ruling will cause injury to any other interested party. As previously noted, Mr. Ross violated the trust of the general membership of Local 97 by ignoring corruption within his midst and by improperly causing Local 97 to pay legal fees. Given his past conduct, allowing Mr. Ross to remain President of the Local poses a serious risk to the interests of the rank and file. Finally, denying the application for a stay promotes the public interest. The IBT and the Government intended that the Consent Decree establish a "systematic mechanism to achieve reforms throughout the IBT over the next few years, including . . . enhanced procedures for investigation and discipline of corrupt union officials." United States v. IBT, 905 F.2d 610, 613 (2d Cir. 1990). In fact, over the years, the IBT has been tarnished with a patina of corruption, and actions to clear this troubled past seem squarely in the interest of IBT officials, the IBT rank and file, and the public in general.

Accordingly, Mr. Ross' application for a stay is denied.

So Ordered

Dated: August 18, 1993
New York, New York

Nancy E. Eisen

U.S.D.J.